

In the Matter of FENSKE BROS., INC. and FURNITURE, WOODWORKERS & FINISHERS UNION, LOCAL 18-B OF THE UPHOLSTERERS INTERNATIONAL UNION OF NORTH AMERICA, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR and UNITED FURNITURE WORKERS OF AMERICA, LOCAL 18-B, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. R-1843.—Decided June 7, 1940

Furniture Manufacturing Industry—Investigation of Representatives: stipulation of rival organizations as to question concerning representation having arisen; employer's statement of policy no bar to—*Unit Appropriate for Collective Bargaining:* all employees who work in the mill and cabinet department, finishers, maintenance men, yard employees, spring makers, filling material picker, and employees in the shipping, packing, and crating activities, excluding clerical and supervisory employees; stipulation as to—*Election Ordered*

Mr. Stephen M. Reynolds, for the Board.

Wolf & Love, by *Mr. Stephen Love*, of Chicago, Ill., for the Company.

Mr. Joseph M. Jacobs, of Chicago, Ill., for the Upholsterers.

Meyers & Meyers by *Mr. Ben Meyers*, of Chicago, Ill., for the United.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On March 7, 1940, Furniture, Woodworkers & Finishers Union, Local 18-B of the Upholsterers International Union of North America, affiliated with the American Federation of Labor,¹ herein called the Upholsterers, filed with the Regional Director for the Thirteenth Region (Chicago, Illinois) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Fenske Bros., Inc., Chicago, Illinois, herein called the Company, and requesting an investigation and certification of representatives, pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On April 27, 1940, the National Labor

¹ The name of the petitioning union was amended at the hearing. The petition was filed under the name of Furniture, Woodworkers & Finishers Union, Local 18-B.

Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On May 6, 1940, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the Upholsterers, and United Furniture Workers of America, Local 18-B, affiliated with the Congress of Industrial Organizations, herein called the United, a labor organization claiming to represent employees directly affected by the investigation.

Pursuant to the notice, a hearing was had on May 20, 1940, at Chicago, Illinois, before Josef Hektoen, the Trial Examiner duly designated by the Board. All parties were represented by counsel and participated in the hearing. At the commencement of the hearing the Company moved to dismiss the petition on the ground that the Company had not refused to bargain collectively and that a valid and binding collective bargaining agreement was in existence. The Trial Examiner did not rule on this motion. The motion is hereby denied, since we find in Section III below that no collective agreement exists. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions, the admissibility of evidence, and the form of the questions. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, Fenske Bros., Inc., is an Illinois corporation having its principal place of business and only plant in Chicago, Illinois, where it is engaged in the manufacture of upholstered furniture. During the period from March 1, 1939, to March 1, 1940, the Company purchased raw materials, consisting of lumber, glue, spring wire, burlap, twines, moss, fibre, and cotton felt and covering fabrics, of the approximate value of \$300,000, about 75 per cent of which represents purchases and shipments to the plant from points outside Illinois. During the same period the sales of products manufactured at the plant amounted to \$752,056.35, about 50 per cent of which represented sales and shipments to points outside Illinois.

II. THE ORGANIZATIONS INVOLVED

Furniture, Woodworkers & Finishers Union, Local 18-B of the Upholsterers International Union of North America, is a labor organization affiliated with the American Federation of Labor. It admits to membership production and maintenance employees of the Company.

United Furniture Workers of America, Local 18-B, is a labor organization affiliated with the Congress of Industrial Organizations. It admits to membership production and maintenance employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In the past the Company had had some dealings with the Upholsterers, including a statement of policy, but had not entered into any collective bargaining agreement with it.

The parties stipulated, and we find, that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The parties stipulated, and we find, that all employees of the Company at its Chicago, Illinois, plant who work in the mill and cabinet department, finishers, maintenance men, yard employees, spring makers, filling material picker, and employees in the shipping, packing, and crating activities, excluding clerical and supervisory employees, constitute a unit appropriate for collective bargaining. We find that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The parties stipulated, and we find, that both the Upholsterers and the United have a substantial membership among the employees

in the unit we have found appropriate in Section V above. We find that an election will best resolve the question concerning representation.

Those eligible to vote in this election shall be those employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during such pay-roll period because they were ill or on vacation and employees who were then or have since been temporarily laid off, but excluding employees who have since quit or been discharged for cause. The Upholsterers shall be designated on the ballot as Local 18-B, A. F. of L., and the United as Local 18-B, C. I. O.

Upon the basis of the above findings of fact and upon the entire record in this case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Fenske Bros., Inc., Chicago, Illinois, at its Chicago, Illinois, plant, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All employees of the Company, at its Chicago, Illinois, plant, who work in the mill and the cabinet department, finishers, maintenance men, yard employees, spring makers, filling material picker, and employees in the shipping, packing, and crating activities, excluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with Fenske Bros., Inc., Chicago, Illinois, an election by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Thirteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations,

among all employees of the Company at its Chicago, Illinois, plant who work in the mill and cabinet department, finishers, maintenance men, yard employees, spring makers, filling material picker, and employees in the shipping, packing, and crating activities, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during such pay-roll period because they were ill or on vacation and employees who were then or have since been temporarily laid off, but excluding supervisory and clerical employees and employees who have since quit or been discharged for cause, to determine whether they desire to be represented by Furniture, Woodworkers & Finishers Union, Local 18-B of the Upholsterers International Union of North America, affiliated with the American Federation of Labor, or United Furniture Workers of America, Local 18-B, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.